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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,210	12/08/2003	Marc Richelsoph	BBM-141US2	2079
23122	7590	08/27/2007		
RATNERPRESTIA			EXAMINER	
P O BOX 980			SHAFFER, RICHARD R	
VALLEY FORGE, PA 19482-0980				
			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			08/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,210	Applicant(s) RICHELSON ET AL.	
	Examiner Richard R. Shaffer	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 13-17, 21 and 61 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 13-17, 21 and 61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The amended drawings filed on June 14th, 2007 are acknowledged and accepted by the examiner. The previous drawing objections are hereby withdrawn.

Specification

The amended abstract filed on June 14th, 2007 is acknowledged and accepted by the examiner. The previous abstract objection is hereby withdrawn.

Claim Rejections - 35 USC § 112

The amendments to the claims filed on June 14th, 2007 are acknowledged and accepted by the examiner. The previous rejections under 35 U.S.C. 112, 2nd paragraph are hereby withdrawn.

Terminal Disclaimer

The terminal disclaimer filed on June 14th, 2007 disclaiming the terminal portion of any patent granted on this application has been reviewed and is NOT accepted.

The application/patent being disclaimed has not been identified.

Specifically, the field for the prior patent No. is left blank.

Double Patenting

Claims 1-8, 10, 15-17, 21 and 61 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,695,846. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the claims lies in the fact that the patent claims include more elements are is thus more specific. Thus,

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the invention of the patent is in effect a species of the generic invention of the application claims. It has been held that the generic invention is "anticipated" by the "species." See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

Claims 1-8, 10, 15-17, 21 and 61 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22, 26-33, 35, 36, 42, 54 and 55 of copending Application No. 10/401,997. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference lies in the fact that the copending application recites functionally that the screw retaining means is for use with a bone plate. Therefore, it would have been obvious to one having ordinary skill in the art to have provided a bone plate for the screw retaining means. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 61 is rejected under 35 U.S.C. 102(b) as being anticipated by Ralph et al (US Patent 5,607,426).

Ralph et al disclose an assembly (**Figures 1-8**) comprising: a curved base plate (**100, Figure 3a**) having at least one aperture (**110**) extending through with a recess (**111**); the aperture extending along the longitudinal axis of the plate; a screw retaining

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means (142) having a recess (143) to encompass the head of a bone screw; the screw retaining means being rotatable and locks by rotating elements (147) into the recesses (111) and when inserted locks/blocks the screw head and when rotated out unlocks/doesn't block the screw head.

Claims 1-8, 10, 15-17 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (US Patent 6,138,550).

Michelson discloses (**Figures 1-97D**) a device comprising:

[First Interpretation] a base plate (**Figures 1-8, 28 and 33**) having an aperture (complex of elements 14 with 24 together or 408 and 402 together) having a through opening (14 or 408); a screw retaining means (20) having an eccentric hole (relative to its central axis) that can rotate into a concentric position relative to through openings (14 or 408) that receive screws (30); the aperture is aligned along the longitudinal axis as well as being at an acute angle (0 degrees) relative to it; and the retaining mechanism being a washer/disk/clip/ring and is flush with the upper surface of the plate.

[Second Interpretation] a base plate (**Figure 28**) having an aperture (408) having a through opening; a screw retaining means (**Figure 29**) having an eccentric hole (412, relative to its central axis) that can rotate into a concentric position relative to the through opening which can receive screws (30); the aperture is aligned along the longitudinal axis as well as being at an acute angle (0 degrees) relative to it; the retaining mechanism being a washer/disk/clip/ring and is flush with the upper surface of the plate; the retaining mechanism located in a radially and outwardly recessed groove (410) in the wall of the aperture.

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[Third Interpretation] a base plate (**Figures 40-45 and 64-67**) having an aperture (**528**) having a through opening; a screw retaining means (**Figure 66**) having an eccentric hole (**524**, relative to its central axis) that can rotate into a concentric position relative to the through opening that can receive screws (**30**); the aperture is aligned along the longitudinal axis as well as being at an acute angle (0 degrees) relative to it; the retaining mechanism being a washer/disk and is flush with the upper surface of the plate; the retaining mechanism located in a radially and outwardly recessed groove in the wall of the aperture.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Campbell et al (US Patent 6,602,255).

Michelson discloses all of the claimed limitations (in regards to the first and second interpretations utilizing the base plate of **Figure 28**) except for a c-shaped retaining mechanism to be collapsible for insertion into the groove of the aperture.

Campbell et al teach the use of a collapsible c-ring for quick insertion while still preventing screw back out. It would have been obvious to one having ordinary skill in the art at the time the invention was made to design a C-shaped ring with protrusions **414** to allow for quick insertion (removing the need to first properly align the retaining

mechanism relative to opening **402**) and then allowing one to merely rotate the protrusions **414** to block the screw. This would either hasten surgical time or allow for quick manufacture by including the retaining mechanism initially without the need for time-consuming alignment.

Response to Arguments

Applicant's arguments filed June 14th, 2007 have been fully considered but they are not persuasive. Applicant argued the previously set forth second interpretation of Ralph et al in regards to claim 61. However, the first interpretation was the correct one in regards to claim 61. The previous second interpretation was given mainly in regards to claim 21.

Applicant's arguments in regard to Michelson are moot in view of the new interpretations set forth.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

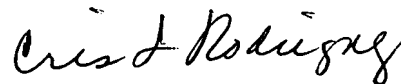
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer
August 22nd, 2007



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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700